



1 This issue should have been addressed before the Motion was filed. It is not proper to ask  
2 the Court to provisionally seal a document based on an as-of-yet unspecified argument that an  
3 opposing party may eventually assert. Rather, it is the moving party that bears the burden of  
4 overcoming the presumption in favor of public access and disclosure. *Kamakana v. City and Cnty.*  
5 *of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006). Further, the marking of a document as  
6 confidential or does not, without more, justify filing the document under seal. *Heath v. Tristar*  
7 *Products, Inc.*, Case No. 2:17-cv-02869-GMN-PAL, 2019 WL 12311995, at \*1 (D. Nev. Apr. 17,  
8 2019) (*citing Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003)).

9 The parties must meet and confer regarding the sealing of information in Defendant’s exhibit.  
10 Once an agreement is reached, Defendant must refile its Motion to Supplement and attached exhibit,  
11 with only those portions that are properly sealed filed provisionally under seal, along with a motion  
12 or stipulation including sufficient reasons establishing good cause to seal. The remainder of the  
13 documents must be filed unredacted on the public docket. If agreement cannot be reached,  
14 Defendant should work with opposing counsel to submit a single memorandum explaining the  
15 supposed basis for sealing the information at issue.

16 Further, because the Court finds reading an entire four-hour deposition transcript unlikely to  
17 be a wise use of judicial resources, Defendant is advised to consider filing only those portions that  
18 support its argument that the Motion for Additional Time should be granted.

## 19 **II. Order**

20 Accordingly, IT IS HEREBY ORDERED that Defendant’s Motion to Seal (ECF No. [181])  
21 is DENIED without prejudice.

22 IT IS FURTHER ORDERED that the Clerk of Court is directed to strike ECF Nos. [179]  
23 and [180] from the docket.

24 IT IS FURTHER ORDERED that the parties must meet and confer regarding which portions  
25 of the Motion to Supplement (ECF No. [179]) and attached deposition transcript are properly filed  
26 under seal. If an agreement is reached, Defendants must refile the documents, with only the agreed  
27 upon portions of the documents filed provisionally under seal, along with a stipulation to seal. If  
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1 agreement cannot be reached, the parties must file a Memorandum with the Court in which  
2 Counterdefendants explain why sealing is justified.

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4 DATED this 16th day of May, 2025.

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7 ELAYNA J. YOUCHAK  
8 UNITED STATES MAGISTRATE JUDGE  
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